

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

DAVID PIRK, ANDRE JENKINS,  
and TIMOTHY M. ENIX,

Defendants.

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Docket No.: 15-CR-142-EAW-MJR

**DEFENSE: THEORY OF CASE INSTRUCTION**

**(VOIR DIRE)**

Although you have just heard me read a portion of the indictment to you, I caution you -- as I have and will throughout this trial -- that the indictment is not evidence. It is the government's allegations, nothing more and nothing less. I have read it to you at the government's request, to summarize their belief as to what they intend to try to prove to you. You should not take my having read it to you as some indication that I agree with one side in the case or the other.

Recall that the burden of proof beyond a reasonable doubt rests, at all times, with the government, and that you must keep an open mind as to all defendants and all charges and government allegations until all the proof has been presented and you retire to begin your deliberations.

Each defendant is presumed innocent and need not testify or say anything at all about the government's allegations. The burden of proof lies with the government throughout this trial.

In addition, remember that each defendant is entitled to have the proof against him evaluated separately to determine if the prosecution has proven every element of every charge beyond a reasonable doubt.

Because not every defendant is charged with the exact same charges, I will not summarize the position of each defendant on each charge. That will be done during the trial. Although I remind you that the defense has no burden and, in fact, does not even have to present a defense.

I will, however, make the general statement -- this trial involves different individuals charged with different crimes. As to the common charge based on a claim of racketeering, the defendants point out that the KMC has hundreds of members in chapters all over the country. These chapters often operated independently and attracted different types of people. The vast majority of KMC members joined the club to spend time with friends and family, and ride motorcycles. Any wrongdoing committed by individual KMC members was the work of those individual members and not the work of the KMC or the conducting of the affairs of the KMC. Each defendant maintains that there was no agreement to commit criminal acts that form the basis of the charge of

conspiracy to engage in racketeering, Count 1, which I previously read to you.

As to the other charges, listen to the opening statement of each attorney as they set forth their position, keep an open mind, and separately evaluate the evidence against each defendant to see if the government has proven each charge beyond a reasonable doubt. Each defendant has a right to individualized consideration of the evidence and arguments that are relevant to him. To do that, you will need to listen carefully to the evidence about each individual, and follow my instructions about which pieces of evidence apply to which individual, and how you may use that evidence.

I will do my best to instruct you how to consider specific pieces of evidence during the trial. But, please also be diligent and keep in mind that the law does not permit someone to be guilty by association -- associating with a “bad actor” does not make someone guilty of a crime.

I also remind you now, as I have before and will repeatedly during the trial, that you must keep your minds open until you have had a chance to hear all the evidence presented by the parties in this trial.

Dated: February 5, 2018

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